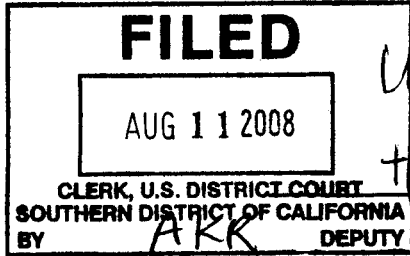


Larry Jones E-17213

P.O. Box 5004

CALIFORNIA CA 92233

Original



United States Court of Appeal for  
the Ninth Circuit.

Civil No: 08CV0623-JLS (RBB)

Larry Jones

Petitioner  
Pro/Se

United States District Court San Diego

Respondant

L.E. Scribner

Warden

Real Party in Interest

Motion Appending Denial  
of Appointment of Counsel  
to Prosecute Habeas  
corpus challenging legality  
of Detention

28 U.S.C. 1915(a)

(MANDATE)

challenging Dismissal of  
his Petition.

Petitioner Larry Jones, Proceeding under I.F.P. status  
requests this court to mandate the District Court  
Central (Southern) District to appoint counsel to  
represent petitioner as under Ake v. Oklahoma (Supra)  
(1990) This petitioner has a protected liberty interest.

1 This central District court keeps dismissing Petitioners  
 2 pro/se petition despite the fact that his claim is  
 3 clearly a claim challenging the execution of his  
 4 sentence. A claim in which the jurisdiction is the  
 5 boundaries of the Southern District court. In which  
 6 Petitioner has attempted to file and challenge his  
 7 'illegal Detention' DUNN v. HENMAN (9th Cir 1989)  
 8 McKnight v. Foreman (1997) WL 50267 N.D. Cal.  
 9 ("Execution of Sentence")

10 Petitioner in pro/se requests appointment of counsel  
 11 because despite Petitioner properly exhausting his claim  
 12 with the Prison, attaching the admin. appeal to the brief  
 13 He still is being denied access to court wolf v. McDonnell,  
 14 supra (1974) without counsel Petitioner will likely be trapped up  
 15 by opponents lawyers Hughes v. Joliet Correctional Center supra (1991)

16 Petitioner's summary dismissal also is in Jurisdictional Error.

17 Petitioner requests mandate to proceed with counsel appointed  
 18 to pursue his claim, Weygant v. Look (9th Cir 1983) Cohen v. Cooper (supra)  
 19  
 20

Petitioner also request to proceed by this court  
mandating the District court to reverse dismissal  
of Petitioners Petition as the District court  
unconstitutionally has denied Petitioner liberty interest  
absent full and fair hearing.

O Connell v. Kirchner (SUPRA) (1995)

Ex Parte Wilson supra (1885)

Respectfully submitted

Date: August 7 2008

LARRY JONES in pro se

Larry Jones

Bong v. MacDougall supra (1982)

Petitioner in pro se

# STATE OF CALIFORNIA COUNTY OF IMPERIAL

(C.C.P. SEC.446 &amp; 201.5; 28 U.S.C. SEC. 1746)

I, Larry Jones Petitioner DECLARE UNDER PENALTY OF PERJURY THAT: I AM THE Petitioner IN THE ABOVE ENTITLED ACTION; I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 7<sup>th</sup> DAY OF: August 2008 AT CALIPATRIA STATE PRISON, CALIPATRIA, CALIFORNIA #92233-5002

(SIGNATURE)

Larry Jones  
(DECLARANT/PRISONER)

## PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) &amp; 2015.5; 28 U.S.C. SEC.1746)

I, Larry Jones AM A RESIDENT OF CALIPATRIA STATE PRISON, IN THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM / NOT A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX 5002. CALIPATRIA, CALIFORNIA #92233-5002.

ON August 7<sup>th</sup> 2008 I SERVED THE FOREGOING: Mandamus / app of  
counsel form

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S), WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED AT CALIPATRIA STATE PRISON, CALIPATRIA, CALIFORNIA #92233-5002.

Office of the Clerk  
U.S. Court of Appeals  
P.O. Box 193939  
SAN FRANCISCO, CA  
94119-3939

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: August 7 2008

Larry Jones  
(DECLARANT/PRISONER)

# United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

JUL - 8 2008

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *JAH* DEPUTY

Larry Vernon Jones

V.

L.E. Scribner, Warden; et. al.

## JUDGMENT IN A CIVIL CASE

CASE NUMBER: 08cv623-JLS(RBB)

☐

**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that because Petitioner has again failed to allege exhaustion of state judicial remedies, Court **DISMISSES** the Petition without prejudice and without leave to amend. If Petitioner wishes to pursue these claims in the future, he must file a new petition. Case is closed.....

July 8, 2008

Date

W. Samuel Hamrick, Jr.

Clerk

J. Haslam

(By) Deputy Clerk

ENTERED ON July 8, 2008

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LARRY VERNON JONES,

Petitioner,

v.

L. E. SCRIBNER, Warden, et al.,

Respondents.

Civil No. 08cv0623-JLS (RBB)

**ORDER DISMISSING SECOND  
AMENDED PETITION WITHOUT  
LEAVE TO AMEND**

On April 4, 2008, Petitioner, a state prisoner proceeding pro se, submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis. On April 21, 2008, the Court denied Petitioner's request to proceed in forma pauperis because he had failed to provide sufficient financial information. The Court dismissed the Petition because Petitioner had failed to satisfy the filing fee requirement, and because he had failed to allege exhaustion of his state court remedies as to the claims presented in the Petition. Petitioner was granted leave to renew his in forma pauperis application and to submit an amended petition curing this pleading defect.

On May 15, 2008 Petitioner filed a renewed application for leave to proceed in forma pauperis and a First Amended Petition. On May 29, 2008, the Court granted Petitioner's application to proceed in forma pauperis but again dismissed the First Amended Petition for failure to allege exhaustion of state judicial remedies. The Court notified Petitioner that if he

1 failed to file a Second Amended Petition by June 16, 2008, which alleged exhaustion of state  
2 court remedies, his petition would be dismissed without leave to amend and he would have to  
3 begin again by filing a new federal habeas petition which will be given a new civil case number  
4 On June 16, 2008, Petitioner filed a Second Amended Petition.

5 Review of the Second Amended Petition indicates that Petitioner has once again failed  
6 to allege exhaustion of his state court remedies. Petitioner again cites Hill v. Alaska, 297 F.3d  
7 895 (9th Cir. 2002) as permitting him to avoid the exhaustion requirement. (See Pet. at 1.) The  
8 Ninth Circuit in Hill held that a federal habeas petition from a state prisoner challenging the  
9 calculation of his release date by prison officials, as Petitioner here is doing, is neither "second"  
10 nor "successive" to that prisoner's initial federal habeas petition challenging his conviction, as  
11 those terms are used in 28 U.S.C. § 2244(b), which proscribes the filing of second or successive  
12 petitions unless certain conditions are met. Hill, 297 F.3d at 898. However, nothing in Hill  
13 authorizes Petitioner to avoid the exhaustion requirement.

14 Petitioner also alleges that he need not exhaust state court remedies because there are no  
15 such remedies available to him. He claims that because he is challenging his parole  
16 determination, he cannot pursue his claims in the state courts. This is incorrect. California state  
17 prisoners may challenge their parole release dates by submitting a petition for habeas corpus.  
18 See In re Rosecrantz, 29 Cal. 4th 616 (2002).


19 As Petitioner was instructed in the previous Orders of dismissal, "habeas petitioners who  
20 wish to challenge either their state court conviction or the length of their confinement in state  
21 prison, must first exhaust state judicial remedies. . . [by presenting] the California Supreme  
22 Court with a fair opportunity to rule on the merits of every issue raised in his or her federal  
23 habeas petition." (see 4/21/08 Order at p. 2, citing 28 U.S.C. § 2254(b)-(c) and Granberry v.  
24 Greer, 481 U.S. 129, 133-34 (1987).) Petitioner was also instructed that: "If state courts are to  
25 be given the opportunity to correct alleged violations of prisoners' federal rights, they must  
26 surely be alerted to the fact that the prisoners are asserting claims under the United States  
27 Constitution." (See 4/21/08 Order at p.2, citing Duncan v. Henry, 513 U.S. 364, 365-66 (1995).)  
28 The Court dismissed the original Petition after finding that Petitioner had failed to allege that he

1 had presented his claims to the California Supreme Court, and granted Petitioner leave to file  
2 an amended petition curing this pleading defect. (Id. at 4.) Petitioner has specifically indicated  
3 that he has not presented his claims to the California Supreme Court. (See Pet. at 6-8.)

4 Because Petitioner has again failed to allege exhaustion of state judicial remedies, the  
5 Court **DISMISSES** the petition without prejudice and without leave to amend. If Petitioner  
6 wished to pursue these claims in the future, he must file a new petition which will be given a  
7 new civil case number. The Clerk shall close the file.

8 **IT IS SO ORDERED.**

9  
10 DATED: July 8, 2008

11   
12 Honorable Janis L. Sammartino  
13 United States District Judge  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LARRY VERNON JONES,  
Petitioner,  
  
v.  
  
L. E. SCRIBNER, Warden, et al.,  
Respondents.

Civil No. 08cv0623-JLS (RBB)

**ORDER:**

**(1) GRANTING APPLICATION TO  
PROCEED IN FORMA PAUPERIS;  
AND,**

**(2) DISMISSING FIRST AMENDED  
PETITION WITHOUT PREJUDICE**

On April 4, 2008, Petitioner, a state prisoner proceeding pro se, submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis. On April 21, 2008, the Court denied Petitioner's request to proceed in forma pauperis because he had failed to provide sufficient financial information. The Court dismissed the Petition because Petitioner had failed to satisfy the filing fee requirement, and because he had failed to allege exhaustion of his state court remedies as to the claims presented in the Petition. Petitioner was granted leave to renew his in forma pauperis application and to submit an amended petition curing this pleading defect. Petitioner has now filed a renewed application for leave to proceed in forma pauperis and a First Amended Petition.

Petitioner has no funds on account at the California correctional institution in which he is presently confined. Petitioner cannot afford the \$5.00 filing fee. Thus, the Court **GRANTS**

1 Petitioner's application to proceed in forma pauperis, and allows Petitioner to prosecute the  
2 above-referenced action as a poor person without being required to prepay fees or costs and  
3 without being required to post security.

4 However, a review of the First Amended Petition indicates that Petitioner has once again  
5 failed to allege exhaustion of his state court remedies. Rather, Petitioner cites Hill v. Alaska,  
6 297 F.3d 895 (9th Cir. 2002) as permitting him to avoid the exhaustion requirement. (Pet. at 6-  
7 9.) The Ninth Circuit in Hill held that a federal habeas petition from a state prisoner challenging  
8 the calculation of his release date by prison officials, as Petitioner here is doing, is neither  
9 "second" nor "successive" to that prisoner's initial federal habeas petition challenging his  
10 conviction, as those terms are used in 28 U.S.C. § 2244(b), which proscribes the filing of second  
11 or successive petitions unless certain conditions are met. Hill, 297 F.3d at 898. However,  
12 nothing in Hill authorizes Petitioner to avoid the exhaustion requirement.

13 As Petitioner was instructed in the previous Order of dismissal, "habeas petitioners who  
14 wish to challenge either their state court conviction or the length of their confinement in state  
15 prison, must first exhaust state judicial remedies. . . [by presenting] the California Supreme  
16 Court with a fair opportunity to rule on the merits of every issue raised in his or her federal  
17 habeas petition." (4/21/08 order at p. 2, citing 28 U.S.C. § 2254(b)-(c) and Granberry v. Greer,  
18 481 U.S. 129, 133-34 (1987).) Petitioner was instructed that: "If state courts are to be given the  
19 opportunity to correct alleged violations of prisoners' federal rights, they must surely be alerted  
20 to the fact that the prisoners are asserting claims under the United States Constitution." (4/21/08  
21 Order at p.2, citing Duncan v. Henry, 513 U.S. 364, 365-66 (1995).) The Court dismissed the  
22 original Petition after finding that Petitioner had failed to allege that he had presented his claims  
23 to the California Supreme Court, and granted Petitioner leave to file an amended petition curing  
24 this pleading defect. (Id. at 4.) Petitioner has specifically indicated that he has not presented his  
25 claims to the California Supreme Court. (See Pet. at 6-9.)


26 Because Petitioner has failed to allege exhaustion of state court remedies, the First  
27 Amended Petition is **DISMISSED** without prejudice. The Court will grant Petitioner one further  
28 opportunity to amend his Petition to cure this pleading defect.

**CONCLUSION AND ORDER**

Petitioner's Motion to proceed in forma pauperis is **GRANTED** and the First Amended Petition is **DISMISSED** for failure to allege exhaustion of state court remedies. If Petitioner wishes to proceed with this action, he must file, on or before **June 16, 2008**, a Second Amended Petition in which he alleges exhaustion of state court remedies. If Petitioner has failed to allege exhaustion of state court remedies by June 16, 2008 and still wishes to proceed with his claims, he will be required to file a new petition which will be given a new civil case number.

**IT IS SO ORDERED.**

DATED: May 29, 2008

  
Honorable Janis L. Sammartino  
United States District Judge

## Notice of Appeal Notification Form

**To:** Clerk, U.S. Court of Appeals**Date:** 8/22/2008**From:** U.S. District Court, Southern District of California**Subject:** New Appeals Case Information & Docket Fee Notification

### Case Information

Case Title: Larry Vernon Jones v. L.E. Scribner, Warden; Edmund G. Brown, Jr., The Attorney General of the State of California

U.S.D.C. No.: 08cv623-JLS-RBB U.S.D.C. Judge: Janis L. Sammartino

Complaint/Indictment/Petition Filed: Petition

Appealed Order Entered: 7/8/2008

Notice of Appeal Filed: 8/11/2008

Court Reporter: n/a

COA Status: ☐ Granted in full/part (appeal only) ☐ Denied (send clerk's file)

### Docket Fee Notification

Docket Fee: ☐ Paid ☐ Not Paid ☒ No Fee Required

USA/GOVT. APPEAL: ☐ Yes ☒ No

Date F/P granted (Show Date and Attach Copy of Order): 5/29/2008

Was F/P Status Revoked? ☐ Yes ☐ No

Companion Case(s): (Please list consolidated cases, if applicable) \_\_\_\_\_

### Counsel Information

#### Appellant Counsel:

Larry Vernon Jones  
E-17215  
Calipatria State Prison  
PO Box 5004  
Calipatria, CA 92233

#### Appellee Counsel:

Attorney General  
State of California  
Office of the Attorney General  
110 West A Street  
Suite 1100  
San Diego, CA 92101-5266  
(619)645-2076

Counsel Status: ☐ Retained ☐ Appointed ☒ Pro Se

Appointed by: \_\_\_\_\_  
(Attach copy of order/minutes)

**Defendant Information**Prisoner ID Number: E-17215

Bail: \_\_\_\_\_

Custody: x**SERVICE LIST**

**Counsel for Appellant(s) and Appellee(s), as listed on the previous page, have been sent copies of the following items:**

x	Transmittal of U.S.C.A. (Appellant and Appellee)
x	Case Information/Docketing Fee Notification Form. (Appellant Only)
x	Notice of Appeal. (Appellant, Appellee, U.S. District Judge, USPO, and Court Reporter)
x	Docket Entries (Appellant and Appellee)
x	Designation of Reporter's Transcript and Ordering Form. (Appellant Only, mailed separately)
	Order for Time Schedule. (Criminal Only) (Appellant, Appellee, and Court Reporter)
	Magistrate Judge's Report and Recommendation
	COA Order
	F/P Order
	Minute Order
x	Other: Judgment, entered 7/8/2008; Order Dismissing Second Amended Petition without Leave to Amend, entered 7/8/2008; Order (1) Granting Application to Proceed in forma pauperis; and, (2) Dismissing First Amended Petition without Prejudice.

Form Completed And Documents Served By U.S. District Court Deputy Clerk:

Angela Rowland

Deputy's Name

A Rowland

Deputy's Signature

**UNITED STATES DISTRICT COURT**

Southern District Of California  
Office Of The Clerk  
880 Front Street, Room 4290  
San Diego, California 92101-8900  
Phone: (619) 557-5600  
Fax: (619) 702-9900

W. Samuel Hamrick, Jr.  
Clerk of Court

To: Clerk, U.S. Court of Appeals  
P.O. Box 193939  
San Francisco, CA 94119-3939

Re: **USCA No:**  
**USDC No: 08cv623-JLS-RBB**  
**Jones v. Scribner et al**

Clerk, U.S. Court of Appeals, enclosed herewith you will please find:

x	Copy of the Notice of Appeal	x	Docket Entries
x	Case Information/Docket Fee Payment Notification Form		
	Order for Time Schedule (Criminal)		
	Original Clerk's Record in	set(s) of	volume(s).
	Reporter's transcript's transcripts in	set(s) of	volume(s).
	Exhibits in	envelope(s)	box(es) folders(s)
x	Judgement Order		F/P Order
	CJA Form 20		Minute Order
	Certificate of Record		Mandate Return
	Magistrate Judge's Report and Recommendation		
	COA Order		
	Amended docket fee notification form		
	Order Appointing Counsel for Appeal		
x	Order Dismissing Second Amended Petition without Leave to Amend, entered 7/8/2008; Order (1) Granting Application to Proceed in forma pauperis; and, (2) Dismissing First Amended Petition without Prejudice.		
x	Please acknowledge on the enclosed copy of this transmittal		

Sincerely yours,

W. Samuel Hamrick, Jr.  
Clerk of Court

By: ARowland  
Angela Rowland, Deputy

Date: